

BellSouth Telecommunications, Inc. 615 214-6301  
Suite 2101 Fax 615 214-7406  
333 Commerce Street  
Nashville, Tennessee 37201-3300

October 15, 1999

 **BELLSOUTH**

RECEIVED IN  
REGULATORY DIVISION

Guy M. Hicks  
General Counsel

99 OCT 15 PM 1 59

EXECUTIVE SECRETARY

VIA HAND DELIVERY

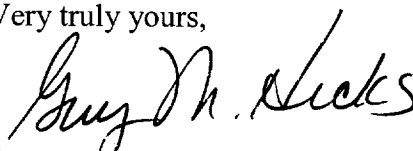
David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition for Arbitration of ITC/DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*  
Docket No. 99-00430

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Exceptions to Report and Initial Order of Pre-Arbitration Officer. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH:ch  
Enclosure

**FILE**

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

IN RE: *Petition by ITC^DeltaCom Communications, Inc. for Arbitration of  
Certain Unresolved Issues in Interconnection Agreement Negotiations  
Between ITC^DeltaCom and BellSouth Telecommunications, Inc.*

Docket No. 99-00430

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**EXCEPTIONS TO REPORT AND INITIAL ORDER OF**  
**PRE-ARBITRATION OFFICER**

On October 6, 1999, the Pre-Arbitration Officer in the above-captioned proceeding issued a "Report and Initial Order of Pre-Arbitration Officer" (hereinafter the "Report") in this docket. In the Report, the Pre-Arbitration Officer stated that the Report may be appealed to the Arbitrators within ten (10) days from its entry. Pursuant to the Report and T.C.A. §§ 65-2-111 and 4-5-315(b), BellSouth Telecommunications, Inc. ("BellSouth") respectfully files the following exceptions to the Report:<sup>1</sup>

---

<sup>1</sup>T.C.A. § 65-2-111 requires a party "adversely affected" by a proposed order of a hearing officer to file "exceptions" to that order with the TRA, while T.C.A. § 4-5-315(b) requires a party seeking review of an initial order to file a "petition for appeal." BellSouth respectfully requests that this pleading be treated as sufficient to bring to the Arbitrators' attention BellSouth's objections to the Initial Order under either statutory provision.

**FILE**

### **Performance Measurements and Liquidated Damages**

The Report reflects that Issues 1(a), 1(b), 2(c)(vi), 2(c)(xiv)(b), 8(b), and 8(f), relating to certain remedies, including performance measures, cost reimbursement, attorneys' fees and liquidated damages, should be arbitrated. The Report states as grounds for finding these issues appropriate for arbitration that they "relate specifically to 47 USC § 251(c), regarding interconnection that is equal in quality on rates, terms, and conditions that are reasonable". (Report at 10). BellSouth respectfully disagrees. BellSouth believes that, and consistent with previous determinations made by the Tennessee Regulatory Authority (the "Authority"), issues requesting liquidated damages, "financial incentives," penalties and the like are not properly the subject of arbitration. For convenience, BellSouth will not reargue its position again here, but would respectfully direct the Authority to BellSouth's earlier filed Briefs. BellSouth would note, however, in the form of a supplement to its Briefs, that on October 11, 1999, the Pre-Hearing Officer in the BellSouth/DeltaCom Arbitration in Florida struck many of these very issues from that Arbitration (Docket No. 990691-TP) as being inappropriate.

### **UNE Combinations**

Issue 2(b)(iii), regarding combinations of unbundled network elements ("UNEs"), was inappropriately expanded in the Report. The rationale provided in the Report for this expansion is that it was simply a "clarification suggested by DeltaCom at the Conference" and that it "does not unduly expand the issue". The

Report further states that "it provides the Arbitrators with the necessary specificity required for an appropriate determination." (Report at 11). BellSouth respectfully disagrees. BellSouth objected to the expansion of Issue 2(b)(iii) at the August 4, 1999 Conference and in its post-conference Briefs. (BellSouth August 19, 1999 Brief at 9-11 and BellSouth August 31, 1999 Brief at 1-5). Further, the parties have twice filed Joint Issues Lists with the Authority (on August 19, 1999 and on August 31, 1999) neither of which contained the expanded Issue 2(b)(iii) to include a Loop UNE connected to Access Transport. (Report at 6). What the Report fails to note is that the "Access Transport" which DeltaCom seeks to add to a UNE Loop is a tariffed service, specifically, special access transport service. Again, for convenience, BellSouth will not reargue its position here, but would respectfully direct the Authority to BellSouth's earlier filed Briefs. BellSouth, however, would note that by adding this sub-issue, the Report goes beyond simply clarifying an issue (Report at 11), but rather, in fact expands the nature of the relief beyond that requested by DeltaCom in its Petition for Arbitration. This is contrary to the Act's requirements. (See Section 252(b) (4) (A) of the Act).

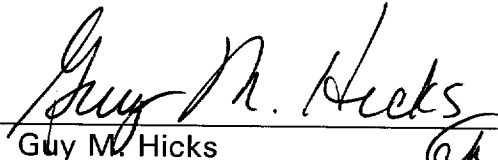
Finally, with respect to statements in the Report that BellSouth did not address certain requests made by the Pre-Hearing officer at the August 4, 1999 Conference, BellSouth respectfully disagrees with the Pre-Hearing Officer. First, BellSouth did state in its August 19, 1999 Brief that it is "willing to agree that the Authority's Staff may directly ask questions of the parties' witnesses at the Hearing in this matter." (BellSouth August 19, 1999, Brief at 16). Second, while

admittedly not addressed in its Brief, BellSouth acknowledged at the August 4, 1999 Conference that it would agree to abide by the arbitration rules proposed by the Pre-Hearing Officer and, after the Report was issued followed up with a letter indicating such. While these matters are not material to the Arbitration, BellSouth respectfully takes exception to the apparent suggestion that it had disregarded requests made by the Pre-Hearing Officer at the August 4, 1999, Conference.

For the foregoing reasons, the Authority should review the Pre-Arbitration Officer's Report, and grant BellSouth relief as requested above.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:   
Guy M. Hicks  
333 Commerce Street., Suite 2101  
Nashville, Tennessee 37201-3300  
(615) 214-6301

R. Douglas Lackey  
Thomas B. Alexander  
Bennett L. Ross  
675 West Peachtree Street, N.E.  
Suite 4300, BellSouth Center  
Atlanta, GA 30375-0001  
(404) 335-0750

182611

CERTIFICATE OF SERVICE

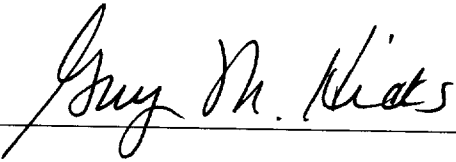
I hereby certify that on October 15, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight

Richard Collier, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0500

- ☒ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight

H. LaDon Baltimore, Esquire  
Farrar & Bates  
211 Seventh Ave. N, # 320  
Nashville, TN 37219-1823

  
\_\_\_\_\_